

III. SYSTEMATIC VISITS TO FACILITIES WHERE PERSONS RESTRICTED IN THEIR FREEDOM ARE CONFINED

Up until January 1, 2006, the Czech Republic lacked a body responsible for carrying out systematic precautionary inspections of places where persons restricted in their freedom are confined. A communication of the Ministry of Foreign Affairs on the conclusion of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was issued Under No. 78/2006 Coll. Int. Agr. This Protocol obliges parties to the Convention to establish so-called national preventive mechanisms. As of January 1, 2006, this national preventive mechanism is embodied by the Defender, who meets all the criteria required of this element of prevention by the Optional Protocol.

The obligations of the Defender have been broadened to include systematic visits to all places (facilities), where persons are or may be located who are restricted in their freedom (the provisions of Section 1 (3) and (4), provisions of Section 21a of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended – hereinafter the “Public Defender of Rights Act”). It is irrelevant whether the freedom of these people has been restricted by a decision or ruling of a public authority, or as a result of the real circumstances they have come to be in. During such visits, the Defender investigates how these persons are treated, and endeavours to secure observance of their fundamental rights and to reinforce their protection against maltreatment.

Maltreatment in the general sense is understood to mean any conduct that shows disregard for human dignity. Depending on the degree of violation of human dignity or even physical integrity, maltreatment can take the specific forms of torture; cruel, inhumane or degrading treatment or punishment; disrespect for the individual and the rights of the individual; disregard for an individual’s social autonomy, privacy and the right to partake in the decision-making process to determine one’s own life; or taking advantage of an individual’s dependence on the provision of care or its further intensification. Formally, maltreatment not only means infringement of fundamental rights stipulated by the Charter of Fundamental Rights or by international conventions, the breaking of the law and other lesser legislation, but it is also understood to mean the failure to fulfil more or less binding instructions, guidelines, norms on the quality of provided treatment, assistance and care, good practice or procedures that are in accordance with the law.

Employees of the Office of the Public Defender of Rights (hereinafter employees of the Office) visit a number of facilities of a similar type within a planned thematic focus. Section 21a (2) of the Public Defender of Rights Act obliges the Defender to draw up a report on the conclusions drawn from the conducted visit. This report may include recommendations and suggestions for remedial measures. Having sent the report, the Defender calls upon the facility in question to respond within the stipulated deadline to the report, and to his recommendations and suggestions for remedial measures (the provisions of Section 21a (3) of the Public Defender of Rights Act). The Defender has at his disposal the means to employ sanctions in connection with carrying out systematic inspections of facilities. These include notifying the governing superior body or, in the absence of a superior body, notification of the Government and alternatively, notifying the public. In addition to reports on individual facilities, the Defender also draws up general reports that contain general observations on all visited facilities of a similar type. These reports are presented to the public at regular press conferences and are also made available at www.ochrance.cz.

Systematic visits are carried out by the Defender according to a specific system and plan, which is prepared ahead of time for a particular period and is divided up into three phases: preparation of the visit, execution of the visit, and the processing of acquired information and the publication of a report on the visit to the facility. These visits are regular and have a strong preventive focus. One or two types of facility are selected for each given period. The selection of specific facilities is based, for instance, upon previous observations made by the Defender, referral by the public or by persons confined to such facilities (both positive and negative) or upon findings made by ministerial control mechanisms. During the selection procedure consideration is also given, if the type of

facility permits it, to who is the founder of the facility, its location, and its size and so on in order to ensure various facilities are included in the selected sample.

Having selected the specific facilities, employees of the Office gather information on the chosen facilities, on applicable legislation, whether domestic or international, including non-binding recommendations, declarations, non-legal standards, the practice of the European Court of Human Rights, or internal regulations issued by the relevant Ministry. Once the gathered information has been processed, the procedure of the visit itself is prepared. The procedure is divided up into basic areas, which the visit is to cover (e.g. the right to privacy, right to personal freedom, healthcare, cultural and social needs, the right to complain etc.). A set of questions on each of the given areas is drawn up. These questions are then put both to the staff of the facility and to persons confined in the facility.

These visits last between one and three days in length and involve three to four employees of the Office. Specialists in the given area (such as doctors, nurses and so on) are also invited to participate on an ad hoc basis. At present, the practise in most cases is to inform the facility of the visit three to five days in advance (with the exception of visits to police cells, which are conducted unannounced). This time allows the facility to, for instance, send the Office its internal regulations, provide general information on the number of persons currently located within the facility and so on. The schedule of the visit is as follows: on the first day of the visit, an introductory meeting with the head of the facility takes place in the morning, following which employees of the Office conduct a survey of the facility and take photographs. If possible, informal interviews are conducted with persons confined to the facility. During the visit special attention is paid to how well the facility is equipped, to the degree of privacy afforded to persons (privacy related to accommodation in rooms as well as privacy during performance of personal hygiene and other needs), whether the facility is fitted with certain specific structural elements (such as metal bars) or audiovisual equipment, whether there are any visible elements that could potentially limit the personal freedom of confined persons (such as round door knobs, disabled access on the premises in the case of persons with a physical handicap), the level of hygiene and so on. In the afternoon of the first day documentation and records are scrutinised (the personal files of clients, social files, medical records, entries recorded by staff in shift reports, the internal regulations and rules governing stays, etc.) and interviews are conducted with facility staff. If the visit is limited to one day, the afternoon is also devoted to talks with persons confined to the facility. In the case of a two- or three-day visit, these talks are conducted throughout the visit. In some cases, before the visit is concluded discussions take place with the head of the facility on the preliminary findings of the employees of the Office and information acquired during the visit is clarified.

Following the visit, the Defender addresses a report of the visit to the head of the facility as stated above, informing him of his findings, of the legal evaluation of the state of affairs, of his recommendations and of any remedial measures. The specific approach to legal evaluation is determined to a certain degree by the type of facility.

In the case of facilities where persons are or may be held due to their dependence on care, the provisions defining the rights and duties of persons located here as well as regulations governing the operation of such facilities are largely incomplete or simply do not exist. In such cases the Defender bases his inquiry on fundamental rights and freedoms as defined by the Charter of Fundamental Rights and Freedoms or by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms. During the application of individual rights to specific situations it is also possible to take inspiration from the practice of the European Court of Human Rights as well as from non-legal standards (such as the standards of the European Committee for the Prevention of Torture – CPT), recommendations of a non-binding character (such as recommendations of the Committee of Ministers of the Council of Europe, the Office of the United Nations High Commissioner for Refugees – UNHCR) or declarations issued by international nongovernmental associations (such as the Declaration on the Rights of Mentally Retarded Persons, the Charter of Rights of the Physically Handicapped, the European Charter for Senior Patients, the recommendations and standards of the World Medical Association – WMA, the International Association for the Treatment of Sexual Offenders – IATSO, the World Psychiatric Association – WPA, etc.).

The rights and obligations of persons confined to facilities on the basis of a ruling of a public authority as well as the rights and obligations of the facility provider are, for the

most part, governed by laws and other legal provisions and are further elaborated upon by internal regulations (e.g. Act No. 169/1999 Coll. on Imprisonment as amended, Decree No. 345/1999 Coll. which sets out the procedure of exercise of prison sentences, as amended, regulations issued by the General Director of the Prison Service, regulations issued by the Minister of Justice, etc.).

In the first quarter of 2006, systematic visits were carried out in five of the seven **social care institutions for physically handicapped adults** (hereinafter SCI or institution) and in 19 **police establishments**, where over 110 cells were inspected.

In the second quarter of 2006, all four **detention facilities for foreigners** in the Czech Republic were selected together with five **institutes for long-term patients** out of the total 73 medical care facilities and similar institutions established by legal entities other than regions, towns, municipalities or private individuals.

In the third quarter of 2006, systematic visits were conducted in seven **medium security and high security prisons** out of the total 14 medium security prisons and three high security prisons.

In the last quarter of 2006 systematic visits were conducted in four **facilities for institutional and protective education** with a special focus on facilities that provide both forms of education concurrently. The total number of facilities where both institutional and protective education are provided concurrently is 32, of which one is a diagnostic institution, seven are children's homes with school, eight are children's homes with school organisationally linked to a reformatory and sixteen are reformatories.

General reports were drawn up and issued by the Defender on the visits conducted. These reports also contained recommendations to the relevant central public administration bodies (Ministry of the Interior, Ministry of Labour and Social Affairs, Ministry of Health, Ministry of Justice, Ministry of Education), the Police Presidium, General Directorate of the Prison Service, the Czech School Inspectorate, as well as to the Supreme Public Prosecutor's Office, the facility founders and directly to the visited facilities.

1. Social Care Institutions for Physically Handicapped Adults

Systematic visits were conducted in **five social care institutions for physically handicapped adults** (hereinafter SCI or institution). The reason for visits to social care institutions was the fact that these facilities had stood outside the Defender's former mandate (the provisions of Section 1 (3) of the Act). Furthermore, the general conditions in social care institutions, especially the rights and obligations of those within them had not been regulated by law at the time of the visits (this area was merely partially governed by rules and regulations and other lesser legislation) with the single exception of Section 89a of Act No. 100/1988 Coll., on Social Security as amended, which introduced certain obligations of the institution (as of October 1, 2005) related to the use of measures limiting the freedom of movement of persons. With the coming into effect of Act No. 108/2006 Coll. on Social Services and related implementing decrees, the provision of social services will newly be regulated by law. The protection of the rights of patients and the quality of provided services is governed by the Standards of Quality in Social Services, a set of criteria that define the required necessary quality of provided social services in terms of personnel, procedures and operation. The introduction of these standards in practice on a nationwide scale will make it possible to draw comparisons of effectiveness among different types of service that address the same type of unfavourable social situation, as well as the effectiveness of different types of facility that provide the same type of service. During the conducted visits, standards were elaborated on various levels in different facilities.

Social care institutions for physically handicapped adults (in accordance with the wording of Act No. 108/2006 Coll. on Social Services) provide comprehensive social services to physically handicapped adults (especially accommodation, meals, nursing, rehabilitation, facultative social activities, organisation of free time activities, employment, etc.).

The facilities selected for visits were those with various founders, located in different regions and of various sizes.

Visited institution	Region	Founder	Number of clients	Average age of clients	Number of employees involved in direct care
SCI Habrovany	Region of South Moravia	Region of South Moravia	66	52.0	29 in three shift operation
SCI Bolevec	Pilsen Region	City of Pilsen	23	82.3	12 in three shift operation
SCI Hrabyně	Moravia-Silesia Region	Ministry of Labour and Social Affairs of the CR	170	53.6	75 in three shift operation
SCI Hořice	Hradec Králové Region	Hradec Králové Region	81	52.8	31 in three shift operation
Domov Betlém	Region of South Moravia	Diacony of the Evangelical Church of Czech Brethren	9	56.1	16 by session

Explanations:

SCI – social care institution

Findings and Recommendations of the Defender

The visited institutions fail to offer clients a home-like environment – the character of a medical facility prevails. The institutions are located in buildings, the majority of which originally served a wholly different purpose (such as nursery schools, or chateaus). The rooms of clients are for the most part fitted with uniform institutional furniture. In all visited institutions, the sanitary facilities were located in the corridors. SCI Hrabyně is the only institution where clients are lodged in units comprising of two rooms with shared sanitary facilities. In Domov Betlém, each client was housed in a separate room (one room with twin beds). The possibility of cooking one's own food is very limited in most institutions, which mainly inconveniences the more self-sufficient clients, married couples and non-married couples. Most facilities (with the exception of Domov Betlém) conform to the "medical model" where all or a majority of those involved in direct care are medical staff. This model is further affirmed by the uniform white clothing of facility staff, giving the impression of a medical facility.

At the recommendation of the Defender, the facilities (i.e. their founders) undertook to carry out suitable refurbishments of the interior in order to accomplish, in so far as possible, the resemblance of a home-like environment, e.g. by painting the walls a colour other than white, changing the colour of clothing worn by staff, preparing conditions that would allow clients to have their own furniture in the facility, and by giving consideration to whether self-sufficient clients would be given the option to prepare their own meals.

Institutions fail to provide clients with a sufficient privacy. The privacy of clients in visited institutions depends on the number of clients housed together in one room. In recent years, it is possible to observe certain reductions in the number of beds per room, which is seen as a positive development. The majority of rooms in visited facilities were two- to three-bed rooms. Only one single facility offered exclusively single-bed rooms. Another facility, however, housed five clients in two walk-through rooms. Not all institutions provided clients with keys to their rooms, cupboards and desks, although many clients would have welcomed the possibility to lock away their belongings. Another area even more serious in terms of possible encroachment upon the privacy and human dignity of clients is the performance of personal hygiene and satisfaction of other

fundamental needs. As already indicated, the majority of sanitary facilities in all institutions are shared. Furthermore, they are not always lockable from the inside, neither do they offer any means of indicating the toilet is in use. Human dignity suffers as a result of the practice common in a number of institutions, whereby toilet chairs situated directly in rooms are used in the presence of other clients with no shielding curtain in place whatsoever.

At the recommendation of the Defender, the institutions undertook in particular to respect the privacy of clients when staff enter the rooms, to enable clients to lock their rooms, furthermore, to label shared toilets, for example by using signs marked "VACANT/ENGAGED" that can be turned, and to employ shielding curtains for use by individual clients when toilets are used in the rooms.

The lack of staff involved in care for highly dependant clients leads to limitations in the fulfilment of their rights and to a necessity to observe regime measures. All visited institutions (with the exception of Domov Betlém) are affected by an obvious lack of staff involved in direct care, which leads to the necessity to adhere to regime measures, especially in the case of dependant clients. These in fact lead to limitations of the right to personal freedom, a complete absence of the freedom of choice and practically no individual approach to clients. The needs of clients are thus adapted to the manner in which work is organised and to the working conditions. The greatest impact is that of the absence of social work with bedridden clients who have difficulties with verbal communication and thus communicate by means of gestures and sounds. Although these persons do not communicate verbally, this does not mean they are unaware when spoken to and that they have no need for such verbal contact. It is often their sole direct contact with the outside world. Speech or any other form of communication with these clients is the only way in which to ensure their real needs and wishes are met and to secure more than a mere satisfaction of basic needs such as meals, hygiene and so on. If the staff are unaware of how the client feels about the care he is afforded, what he likes and what is uncomfortable for him, it could well happen that he is handled in a way that he dislikes or that is in fact unpleasant to him.

Separate attention is paid to the great lack of respect for fundamental human rights and freedoms of legally incapacitated persons. Certain institutions displayed objectionable practice by adhering to the provisions of Section 78, Decree No. 182/1991 Coll., implementing the Social Security Act. These provisions in fact contravened the fundamental human right to personal freedom and the related right to freedom of movement as they permitted legally incapacitated persons to leave the institution only with the prior consent of the guardian. These provisions were nullified by an amendment to the mentioned Decree (Decree No. 506/2006 Coll., which amends Decree No. 182/1991 Coll.), which annulled part four of the Decree and with it Section 78.

At the recommendation of the Defender, the facilities (i.e. their founders) expressed the will to seek an increase in the number of social workers, the mission of which will be to work directly and individually with clients on the basis of individual plans gradually drawn up with the objective of affording the greatest support possible for the client's social rehabilitation. The institutions also undertook to guide staff involved in direct care towards a greater understanding of augmentative forms of communication (complementary communication systems that broaden limited communication capacity, i.e. communication that goes beyond speech) and alternative forms of communication (communication systems that aim to fully compensate for speech) and to promote such methods by means of supervision.

Institutions have poorly defined rules for dealing with complaints. There are also shortcomings in facilities' internal regulations. Two of five institutions have no internal regulations addressing the manner in which complaints are filed and dealt with. With the exception of two institutions, clients had not been informed of whom they may address their complaints to should they feel dissatisfied. In most cases clients had no notion of the fact they could ask another person to act on their behalf. In one institution, although rules for the administration of complaints had been in place since 2004, patients were unaware of them as were certain members of staff.

In all visited institutions, clients rather prefer to express their complaints in an informal fashion. So-called house rules display shortcomings in certain institutions in that they infringe upon the fundamental rights and freedoms of their clients. Decisions

regarding the wording of these rules should be agreed by staff in close cooperation with clients.

At the recommendation of the Defender, the institutions undertook to modify their internal regulations in cooperation with the clients themselves.

2. Police Cells

There were a number of reasons for conducting visits to police cells. One reason was the current state of legislation governing this area, in particular Act No. 283/1991 Coll. on the Police of the Czech Republic as amended (hereinafter APCR), and internal legal provisions issued by the Ministry of the Interior and by the Chief of Police, in particular the binding directive on police cells issued by the Chief of Police (hereinafter BD CP) on December 29, 2004. These provisions stipulate who can be placed inside a police cell and when and define the type of regime that applies. Legislation at the level of acts of law is only fragmentary (Sections 26 to 32 of the APCR). Internal regulations, instead of merely administering the existing provisions laid down by law, tend to stipulate themselves the scope of rights and obligations of imprisoned persons, which is a practice untenable in a state of rule of law.

The employees of the Office conducted visits to 19 police establishments (two–three police establishments in each of the regional police administrations). In the course of the visits a total of 110 police cells were inspected. The visits were all conducted unannounced, both during the day and in evening hours, on weekdays as well as weekends and public holidays.

Administration – region	Total No. of departments**	Departments equipped with police cells*	No. of cells for confinement lasting several hours *	No. of cells for short confinement*
Capital City of Prague	55	1	27	none
Central Bohemia	91	30	46	4
South Bohemia	69	39	55	6
West Bohemia	87	13	37	none
North Bohemia	102	17	50	none
East Bohemia	99	50	69	11
South Moravia	105	38	63	15
North Moravia	101	45	81	none
Total	709	233	428	36

Explanations:

* Data in this column were provided by the Police Presidium

** Data acquired from public information systems, chiefly the website of the Ministry of the Interior of the CR

Findings and Recommendations of the Defender

Restricting the freedom of movement of aggressive people – in particular handcuffing to metal rails. The right of police officers to restrict the freedom of movement of aggressive people is governed by the provisions of Section 16 of the APCR. "The freedom of movement of any person that physically attacks another individual or a policeman, damages property or attempts escape, may be restricted by handcuffing to a suitable object. The restriction of freedom of movement may last up to the moment the person ceases to act in the afore-mentioned manner or until he/she is confined to a police cell, however, for no longer than two hours." This wording clearly implies that the restriction of freedom of movement for the aforementioned reasons may take place practically anywhere with the exception of a police cell, given that the necessary conditions are met. The BD CP on the other hand states that the compulsory fittings of a cell for short confinement include a means of binding aggressive persons in order to restrict their freedom of movement. This internal directive is thus in conflict with the law. Such a state of affairs cannot be maintained for reasons of non-uniform practice: in the absence of any

clear regulation of their installation or their subsequent use, certain police cells are fitted with handcuffing rails while others are not.

In order to find a solution to this point of conflict (as well as other issues – see below) and following an evaluation of all conducted visits, the Defender initiated a personal meeting with representatives of the Police Presidium. This marked completion of the process of amending the internal regulations of the Police of the Czech Republic. The outcome of the meeting was, among other things, an agreement to omit the mention of rails for the handcuffing of aggressive persons in cells for short confinement from the new wording of the BD CP (currently under preparation). Fitted rails will be removed both from these cells as well as from areas in front of cells, where persons are detained for several hours in the absence of camera surveillance (see the specific cases mentioned in the report of the Public Defender of Rights on visits to police establishments).

The right of persons confined to police cells to be advised of their rights and obligations is not always observed. Informing persons held in police cells of their rights and obligations is based on an official document entitled Instructions to Persons Detained, Arrested, Brought Forward or Apprehended at a Police Station. The obligation to ensure these instructions are mediated to the detained individual falls on those police officers that placed the person in the police cell – usually the police officers of district departments. During the conducted visits, it was ascertained that certain district (local) departments fail to fulfil this obligation and persons held in police cells had been proven not to have received any instructions.

Following a meeting with the experts of the Police Presidium, the Defender recommended that the obligation to advise persons as stipulated in the Instructions to Persons Detained, Arrested, Brought Forward or Apprehended at a Police Station, should be performed both by the apprehending officers, and later again by the body acting in criminal proceedings (the investigator, public prosecutor, judge) at a time not directly following apprehension, instead later, after the individual has calmed down and is able to take in the content of the instructions without any stress. This should be documented by a written record signed by the detained individual. The Defender was assured that the obligation to reiterate the instructions as stated above will be laid down in the relevant provisions of criminal law and other related legal provisions (including the BD CP).

The instruction of persons held in police cells of their rights and obligations is often performed verbally. The written notification advising those detained in police cells of their rights and obligations, which contains a listing of all significant rights and obligations of persons held in cells, is not in use by all police departments. The existing written notification also fails to mention the right to certain material conditions and other rights related to the general restriction of personal freedom, in particular the right to legal aid and the right to be informed of one's situation by a third person. Another objectionable aspect is the fact that these instructions are several pages in length and, furthermore, persons asked to sign the form are not provided with a copy.

The above-mentioned uniform written notification was also amended by the Defender: on the basis of a complaint filed by the Defender, the complaint of the Committee against torture and other inhumane, cruel, degrading treatment and punishment of the Government Human Rights Council and in cooperation with the Ministry of the Interior, a new form will be issued with instructions on the rights and obligations of persons detained in police cells (one double-sided A4 page) as an annex to the BD CP, which will be amended to include these rights. One copy will be provided to the detained individual to ensure that he/she is able to check the details at any time during confinement.

The medical examination of persons detained in cells is in most cases (with a handful of exceptions) carried out in the presence of police officers. Medical examinations should be carried out beyond earshot of police officers and, unless otherwise specifically requested by the doctor, also out of their sight. As regards the presence of police officers at the medical examination, the standard procedure is to involve the assistance of police officers at the examination for reasons of security and the necessity to protect medical staff. Although such arguments are justified, it is necessary to bear in mind the human dignity of the examined individual and the obligation to protect information on his/her state of health in accordance with medical confidentiality.

The new wording of the BD CP contains completely new provisions on the performance of medical examinations that take into account the aforementioned requirements. Medical examinations must be performed out of earshot and, unless otherwise decided by the doctor, also out of sight of the police escort. The escorting officer must be of the same sex as the escorted individual.

The right to submit proposals, suggestions and complaints (notifications) to Czech state bodies or to international organisations competent (in accordance with international agreements by which the Czech Republic is bound) for the handling of human rights complaints, **is problematic in the present police practice** due to technical aspects of guaranteeing this right. From a practical point of view, there is no clear solution to guaranteeing/enabling the right in question. The Defender is inclined to believe the submission of proposals, suggestions and complaints (notifications) can, in practice, be ensured through the medium of the legal representative of the detained individual. If the detained individual has no legal representative, he/she writes the complaint him/herself – and for reasons of security – under the supervision of a police officer in a room otherwise used for questioning or in any other similar room available at the police department. If, for objective reasons, the detained individual is unable to write the complaint him/herself, he/she dictates it to a police officer and attaches his/her signature.

The Police of the CR has been forthcoming on the suggestions of the Defender as well on those put forward by the Committee against torture and other inhumane, cruel, degrading treatment and punishment of the Government Human Rights Council and intends to guarantee this right to persons detained in cells.

The provision of meals during the night. The BD CP in force at the time of the visits failed to observe the provisions of Section 31 of the APCR, which state: “in principle, meals are provided to the individual every 6 hours from the time of restriction of personal freedom”, not from the time the person is confined to a cell. The valid BD CP does not account for the provision of meals (not even cold meals) during the night, i.e. between 10 p.m. and 6 a.m. In practice, there were occurrences where the detained individual had been placed in a cell during the night, during which time the six-hour necessary period for obtaining a meal elapsed and the meal was thus not provided till another several hours later.

Based on negotiations of the Defender with representatives of the Police Presidium, the new wording of the BD CP will include provisions stating meals are to be provided during the night also, and as such will be provided if the individual wishes to obtain a meal and requests it (with regard to the conflict between the right to meals and the right to undisturbed sleep). The individual will be demonstrably advised of this right by the police guard upon or shortly after being placed in the police cell by means of instructions for individuals placed in police cells, which the Defender suggested include the above.

The material conditions in cells for confinement lasting up to several hours in length. Human dignity continues to be encroached upon by the fact that the latrine area is in no way whatsoever optically shielded from the rest of the prison cell (by means of a partition, curtain or other suitable means) and the person using the toilet is thus afforded no privacy in the presence of others sharing the cell. The Defender made a recommendation to the Police Presidium of the CR to ensure that WC's in police cells are partitioned off optically both in existing cells and in newly refurbished or newly built cells. This recommendation was accepted as were suggestions for supplementing material accessories in cells to include toothbrush and toothpaste, paper handkerchiefs and hand towels.

Artificial lighting in cells of the same intensity 24 hours a day. In a number of police establishments, it was found that no changes of lighting regime were applied to distinguish day from night and vice-versa. It is the view of the Defender that unchanging lighting intensity may have a negative impact on the mental condition of an individual. The absence of a different lighting regime to distinguish night from day may in addition render it impossible to maintain any clear notion of time. The Defender argued in particular that the denial of sleep is considered to be one of the identifying signs characteristic of torture or cruel, inhumane and degrading treatment.

In spite of an initial unwillingness, the Police of the CR agreed to the requirement of the Defender to change the present lighting system in certain facilities and to thus immediately introduce a dual system of lighting not only in new cells or newly refurbished

cells and in the **four facilities for the detention of foreigners** but in all police cells that lack such lighting.

3. Institutes for Long-term Patients

In the course of the second quarter of 2006, systematic visits were carried out in **five institutes for long-term patients** [the provisions of Section 1 (4) (c) of the Public Defender of Rights Act]. The reason for visits to institutes for long-term patients were similar to those that led to visits in social care institutions, i.e. these facilities had stood outside the Defender's former scope of competence (the provisions of Section 1 (3) of the Public Defender of Rights Act) and furthermore, the fact that the general conditions in healthcare facilities, the rights and obligations of patients located within them were not governed by legal regulations. Merely the rights of patients in general are the subject of legislation.

Institutes for long-term patients (hereinafter ILP) are medical facilities. As such, they rank among specialised healthcare facilities that provide healthcare supplementary to the treatment provided by hospitals.

ILP facilities are determined for the provision of specialised institutional care, which focuses on nursing and rehabilitation of persons suffering from long-term illnesses (the average age of persons in the visited ILP is 78.4). In addition to healthcare, nursing and rehabilitation, it is necessary that these facilities work towards the reintroduction of patients to society and provide psychosocial care. Due to the highly inadequate system of aftercare, it is often necessary for facilities of the ILP type to also ensure palliative and gerontopsychiatric treatment.

Generally speaking, it is necessary to find a solution to the problem of financing aftercare for this area. The effect of expensive medical treatment, often of the highest quality, is nullified if, following discharge from the facility patients have no access to specialised mobile medical care, i.e. the current system of aftercare is affected by a serious lack of geriatric out-patient care and so-called social beds.

Accompanied by specialists in medicine and nursing, employees of the Office conducted visits to five ILP in total, which had been selected in such a way so as to ensure that facilities of various sizes, with different founders, specialisations and of different age would be represented. (ILP in Bílovice nad Svitavou, Ostrava-Radvanice, Kroměříž, Nejdek and Moravské Budějovice).

Visited ILP	Region	Founder (provider)	No. of patients	Capacity of the facility	Average age of patients
ILP Bílovice	South Moravia	Ministry of Health of the ČR	88	85	78
ILP Ostrava-Radvanice	Moravia-Silesia	City of Ostrava	188	190	77
ILP Kroměříž	Zlín Region	Czech province of the Congregation of the Sisters of Mercy	97	105	79
ILP Nejdek	Karlovy Vary Region	Region	86	90	79
ILP Moravské Budějovice	Vysočina	Region	66	80	79

Findings and Recommendations of the Defender

Not one of the visited facilities addressed the legal standing of patients in the correct way. Firstly, there is the question of voluntary hospitalisation (Section 23 of Act No. 20/1966 Coll., on Care of People's Health as amended, Art. 6 (3) of the Convention on Human Rights and Biomedicine) – healthcare facilities were not prepared to consult courts, they failed to require the consent of the patient to his/her hospitalisation or they substituted the agreement of another person for the agreement of the patient. As for the granting of prior, free, informed and retractable consent to medical interventions (Art. 5 of the Convention on Human Rights and Biomedicine), three facilities have no formal

procedure for the granting of patient's consent. The representatives of certain healthcare facilities claimed that ILP do not perform any medical treatment and therefore no prior consent is necessary. This view is in conflict with the mentioned provisions of the Convention on Human Rights and Biomedicine, which refer to any type of intervention related to healthcare, not merely treatment in the sense of Czech legal regulations. As recommended by the Defender in his reports of visits in individual ILP, the granting of agreement with hospitalisation in an ILP and with performed interventions should be formalised.

Upon the arrival of a new patient, often no effort is made to ascertain whether the patient is fully informed of his/her state of health. Not a single one of the visited ILP ensures, let alone documents, the informing of the patient upon arrival of his/her state of health, of the character of the illness, and of the purpose and nature of subsequent treatment or nursing procedures where the patient is interested in such information. **This is a violation of one of the most important prerequisites of granting informed consent to medical treatment and to hospitalisation in general.** The granting of consent is a legal act often performed before the patient is received, sometimes even before his/her first talk to a doctor. As a result the patient may not necessarily comprehend the full extent of the granted consent.

Only one of the visited ILP inquired upon the arrival of patients whether they wished to be kept fully informed of their state of health. The state of health of many patients of long-term healthcare facilities no longer permits the full restoration of health with some patients in the terminal phase of their illness. With the exception of one facility, doctors failed to proactively ascertain whether patients wished to be informed in the case of a negative diagnosis. In view of the delicacy of this issue, the most appropriate approach appears to be to establish the wishes of each patient upon their arrival to the facility and to employ a sensitive approach if and when the patient's state of health begins to deteriorate. No indications were, however, found of patients having been denied requests for information on their state of health by the facility. On the contrary, in all cases, patients were provided with the option to study their medical file; the management of the visited facilities allowed patients to make copies or obtain extracts from medical documentation upon request.

At the recommendation of the Defender on the aforementioned points, the healthcare facilities undertook to introduce correct procedures and to alter existing internal regulations and forms.

Institutes for long-term patients display a clear lack of privacy. Especially older ILP face the problem posed by multiple bedded rooms – up to six beds per room is a socially unacceptable state of affairs. Due to the long-term character of stays, patients have a greater need for privacy and a home-like environment. This state of affairs can thus be viewed as maltreatment in the sense of the Public Defender of Rights Act. This applies in particular to the following situations: the use of toilet chairs, the intimate hygiene procedures of bedridden patients, and the changing of sanitary towels are all carried out in ILP in full view of other patients without employing any means to preserve the dignity and privacy of individuals – in some cases doors leading from the room to the corridor are even left ajar.

In connection with inquiries into the dignity of persons and the preservation of their privacy, the Defender recommended that the facility management alter certain procedures employed by staff (knocking on doors, closing doors when performing hygiene procedures, the use of shielding curtains), which the facility representatives more or less undertook to adhere to. Furthermore, the Defender voiced a recommendation for changes to be made to the structural design in certain areas and recommended that either the number of patients is reduced or greater investments be made. The ILP representatives accepted this recommendation. They referred, however, to the lack of financial means. The situation regarding multiple bedded rooms where toilets are shared by entire wards will thus not improve immediately on the basis of suggestions made by the Defender.

Individuals are not permitted to exercise their right to ownership, as the majority of rooms in healthcare facilities are not fitted with lockable bedside tables. Patients are generally denied the possibility to lock their valuables and money away in bedside tables. The average length of a stay in an ILP differs from facility to facility – from a maximum three months to stays lasting several years in length. In view of

this length, the absence of the possibility to keep one's belongings safely locked away is untenable.

The Defender recommended that each of the healthcare facilities purchases lockable bedside tables. This solution will take some time before it is implemented.

The practice common in institutes for long-term patients – to **take away the personal identity cards of patients** – is against the law. In one such healthcare facility, both the personal identity cards and health insurance cards of patients were taken away on arrival. On a broad scale this practice is inadmissible. The personal identity card is a public document that must be carried by the individual, even persons with diminished legal capacity, in order to allow them to furnish proof of their identity. The provisions of Section 2 (4) of Act No. 328/1999 Coll. on Identity Cards forbids the taking away of personal identity cards upon entry into buildings. The healthcare facility may merely offer to keep safe the patient's personal identity card. It may not, however, demand its surrender or word the offer in a way that does not allow the patient to make a free choice. The safekeeping of personal identity cards is substantiated in the case of patients who are disorientated, in which case healthcare facilities are providing the patient a service.

The Defender recommended the healthcare facility alter the internal regulations and related practices and the ILP undertook to do so.

Institutes for long-term patients wrongly interpret the term “means of restriction”. The use of means of restriction is subject to the decision of a doctor and to the observance of given nursing procedures. As stated by the staff of one ILP, the sideboard of beds is not understood as a regular means of restriction whereas the binding of the arm while the catheter is being fitted, is. The Defender disagrees – this practice indeed constitutes a restriction of movement and, as such, is subject to the same conditions as other means of restriction. Furthermore, it was established that pharmacological means of restriction were considered to be medicines and no special records were kept of their use. This procedure is in conflict with the nursing standards of the facility and, furthermore, it is inconsistent with methodological measures. The Defender must insist that methodological measures are observed consistently in order to prevent the violation of personal freedom of patients.

The healthcare facility has altered its procedure in accordance with the Defender's recommendation.

The system of aftercare lacks a well-developed network of hospice type facilities that would alleviate the present burden on ILP by managing the care of patients in terminal stages of their illness. This type of care is very demanding both in terms of finance and in terms of expertise of staff. Under the present system of care, the quality of care could thus suffer.

In his report, the Defender recommended that the Ministry of Health place adequate pressure on the adoption of a conceptual solution to hospice care. In the course of 2006, work was begun on an amendment to Decree No. 134/1998 Coll., which lists various types of medical treatment each allocated a certain number of points and newly includes a calculation of a single individual day of treatment in hospice care. The amendment was implemented by Decree No. 620/2006 Coll.

4. Facilities for the Detention of Foreigners

In the course of the second quarter of 2006, systematic visits were carried out **in four facilities for the detention of foreigners** [the provisions of Section 1 (4) (b) of the Public Defender of Rights Act]. One of the reasons for these visits was in particular the amendment to Act No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic as amended, which has led, as of January 1, 2006, to a transfer of facilities for the detention of foreigners (hereinafter FDF) under the Refugee Establishments Administration of the Ministry of the Interior of the CR (hereinafter REA). Until then, these establishments had been governed by the Police of the CR.

FDF are establishments where persons of foreign citizenship are restricted in their freedom of movement. They are issued with a decision on detention in accordance with the provisions of Section 124 (1) of Act No. 326/1999 Coll. on the Residence of Foreigners on the Territory of the Czech Republic as amended (hereinafter the Act). The amendment mentioned above aims to ensure that limitations of the rights and freedoms of detained

foreigners do not exceed the extent necessary for the purposes of their detention. Internal regulations governing the running of such establishments should measure up to those common in reception centres of asylum facilities, with the difference that foreigners in detention facilities do not have the right to leave the facility in the course of their detention (except in certain cases defined by law). Changes have been made to the regime governing receiving of visitors, to the conditions of leave from the facility with children; there is a greater focus on the need for leisure activities, and on the provision of psychological and social care. The scope of activities governed by the internal regulations of the facility (hereinafter IR) was also substantially broadened. Provisions governing the obligations of foreigners placed within the facility have been further specified as has the procedure to be followed by the Ministry of the Interior of the CR (hereinafter the Ministry) and the Foreign and Border Police (hereinafter the FBP) on ending the period of detention. In the sense of the Convention on the Rights of the Child special conditions have been introduced for the detention of children aged between 15 and 18 residing in the Czech Republic unaccompanied by a legal representative. Since the coming into force of the amendment, the Police of the CR merely carry out necessary indispensable activities and tasks entrusted to them by the provisions of Section 164 and subsequent laws. At present, the Police of the CR merely ensures security along the perimeters of facilities and security in areas with so-called high security regime.

Law and order within FDF is ensured by a private security agency (hereinafter PSA).

The employees of the Office visited all four existing facilities (Poštorná, Frýdek-Místek, Velké Přílepy and Bělá-Jezová).

Facility	Capacity	MR	HSR	Number of foreigners	Male	Female	AD/UM	Asylum seekers
Poštorná	170	164	6	124	118	6	0/0	49
Frýdek-Místek	43	37	6	35	35	0	0/0	12
Velké Přílepy	140	123	17	113	86	27	0/0	40
Bělá-Jezová	54 (340*)	54	–	33	10	23	11/0	29

Explanations: * Foreseen capacity

MR – moderate regime; HSR – high security regime; AD – adolescents; UM – unaccompanied minors

Findings and Recommendations of the Defender

It was ascertained that FDF apply non-uniform practice when instructing foreigners of the rights linked to their legal position as detained foreign nationals. In certain facilities such instructions were limited to providing information on the possibility of submitting a request for the granting of asylum. In other cases, foreigners were also informed of the possibility of taking legal action in administrative proceedings against the decision on their detention and of the possibility of submitting a motion for release during the time of their detention on the grounds that the reasons for their detention have expired.

At the recommendation of the Defender, the Head Office of the Foreign and Border Police undertook to incorporate in its internal administrative acts the obligation of the Police to provide individuals detained in facilities for the detention of foreigners with complete written instructions, informing them of their right to take legal action in administrative proceedings against the decision on detention and of the possibility to declare their intention to request asylum.

FDF often fail to provide translations of internal facility regulations in all the necessary language versions as well as translations of the forms: Information to foreigners on the internal regulations of the facility for the detention of foreigners and Information to foreigners on the handling of money or private belongings placed in custody.

At the recommendation of the Defender, the Refugee Establishments Administration promised to take prompt remedial measures.

Files lack records of whether relatives of detained foreigners residing legally in the CR or authorities for the social and legal protection of children have been informed of a foreigner's detainment. If no such records are on file, it would be desirable if the police officer receiving the foreigner to the facility requested this information and entered it in the files. Alternatively, if the officer learns that such steps have not yet been taken, he may inform the authorities himself of the foreigner's detainment in accordance with the law.

At the recommendation of the Defender, this non-uniform practice was addressed as of July 1, 2006, in a directive of the Chief of the Foreign and Border Police. This Directive specifies the obligation of police officers to inform detained foreigners of their right to inform a third party – a relative, authority for the legal and social protection of children, embassy (consular office) – of their detainment. At the same time, a uniform template for instructions to foreigners has been introduced.

Visits must often be conducted in the presence of employees of the PSA, even in moderate security regime facilities.

At the recommendation of the Defender, the Refugee Establishments Administration declared that foreigners would in each case be informed of their right to request that the visit takes place in complete privacy. Such a request will, however, always be subject to consideration with regard to its individual character.

Police officers fail to provably inform foreigners **of the reasons for which they have been placed in high security regime detention** or of their right to lodge complaints to contest such placement. A confirmation of the fulfilment of these obligations must be signed by the detained foreigner, and deposited as proof in his/her file.

At the recommendation of the Defender, a modification of a directive of the Chief of Foreign and Border Police has broadened the duty of police officers in the following sense: in the case of the placement of a foreigner in detention with high security regime, the foreigner must be informed of the reasons for this placement, the period for which he/she may be detained in such a way and of the right to lodge a complaint. A written record must be made of this notification by the police officer. At the same time, the department of the Ministry of the Interior responsible for asylum and migration policy initiated an amendment to Act No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic and on Amendments to Certain Other Laws, as later amended, to reflect the above.

The statute of "medical facilities" remains unclear as it does not correspond, de facto and de jure, to current legislation is thus affecting the operation of these facilities as well as their capacity to provide health care.

At the recommendation of the Defender, this area has been addressed by specialised departments of the Ministry of the Interior.

In one such facility, **cameras had been installed in the living quarters of foreigners with moderate security regime.** The director of the facility and the police claimed they were not in use. On the contrary, cameras in areas with a high security regime were fully functional and in use. This measure encroaches upon the privacy of detained foreigners and is a violation of their right to personal integrity and privacy as laid down by Art. 7 (1) and Art. 10 of the Charter of Fundamental Rights and Freedoms. The installation and operation of a camera surveillance system in cells or rooms where foreigners are of may be placed has no legal basis and fails to comply with the first condition of encroachment into the private life of an individual – empowerment by law to encroach upon/restrict the right to privacy. For this reason it is irrelevant that the possibility of camera surveillance was established by an internal regulation of the Police of the CR issued by the Ministry of the Interior. This regulation elaborated upon a measure that is not governed by law, and as such, stood outside the law.

At the recommendation of the Defender, the Refugee Establishments Administration removed the cameras from the rooms of foreigners.

5. Prisons

In the third quarter of 2006, systematic visits were carried out in seven prisons profiled as medium security and high security prisons [the provisions of Section 1 (3) and (4) (a) of Act on the PDR].

The visits were narrowed down, unlike in the first and second quarters, for reasons of experience gained from the prison environment when inquiring into individual complaints which suggested visits should be more intensive in terms of time and content. The capacity of most prisons exceeds several fold those facilities visited so far, and interviews with persons confined to these facilities/convicts formed an essential part of the visits.

Visits to selected prisons were carried out in Mírov, Plzeň, Oráčov, Valdice, Rýnovice, Vinařice and Bělušice prisons. Besides standard departments for convicts, special departments (see table) and departments for those serving life sentences were visited.

Prison	Type of imprisonment	Special departments	Capacity No. C, D à 4 m ²	Number of convicts in C and D	of which for- eigners	Fullness in %
Mírov (M.)	B, C, D	DETSS for DT SpD for D	336	372	9	110.7
Plzeň (P.)	A, B, C, D	SpD toxi for C	908	943	113	103.8
Oráčov (O.)	C, B	none	459	526	26	105.4
Valdice (V.)	B, C, D	DETSS for D, DT SpD for D	1,074	1,159	147	107.9
Rýnovice (R.)	B, C	DETSS for C SpD for C TD for B and C	399	478	34	119.8
Vinařice (Vin.)	C	SDMR	758	846	32	107.8
Bělušice (B.)	B, C	SpD toxi for C	560	638	34	113.0

Explanation of the table:

A – supervision, **B** – low security, **C** – medium security, **D** – high security, **DT** – life imprisonment

TD – specialised department for serving protective institutional anti-addiction treatment

SpD – specialised department for convicts with mental and behavioural disorders

SpD toxi – specialist department for imprisonment of convicts with personality and behavioural disorders caused by the use of psychotropic substances

SDMR – specialist department for the imprisonment of mentally-retarded convicts

DETSS – departments with enhanced technical and structural security

On his visits, the Defender concentrated primarily on compliance with convicts' rights as defined in the Act on Imprisonment and in the order of the exercise of imprisonment while paying attention to the conditions of imprisonment in different prisons in general (with respect to material and hygienic conditions, prison staff conduct and their relations with convicts). Based on this observation, the Defender stated that conditions of imprisonment, and not only in terms of compliance with convicts' rights, are not identical. This finding is particularly important when the diversity of conditions for serving sentences can breach the equality of rights of convicts as declared in the Act on Imprisonment.

The visits confirmed the longstanding **problem of overcrowding**, which can be solved, as the Defender believes, only by conceptual steps, i. e. by effective imposition of alternative sentencing. Given that many alternative sentences end up with a sentence of imprisonment because the alternative sentence was not served, increasing prison capacity must be considered. As the numbers of Czech Prison Service staff keep dropping, the number of imprisoned persons is increasing (the number of employees fell by 3.4% compared to 2003, while the number of prisoners increased by 17% in the same period). A system of collective accommodation of 6–15 convicts is established in the vast majority of standard departments of prisons visited.

Overcrowding, collective accommodation, and lack of staff to work with convicts are factors that undermine the intended role of the sentence as the education and subsequent rehabilitation of the convict as well as the protection of society, since every sentence comes to an end one day. Yet, in spite of these obstacles, it can be said that several prisons are managing to build constructive relations with the convicts, which again demonstrates the diverse conditions ensuing probably from the different approaches of

different prisons to securing the service of imprisonment. Special attention was paid to special departments, so-called departments with enhanced technical and structural security, convicts serving life sentences and foreigners. Others of the Defender's findings pertain for instance to the convict's possibility of phone contact with close persons, employment of convicts, violence among convicts, convict's options for spending free time, convicts' self-government and health care.

Findings and Recommendations of the Defender

Overcrowding of prisons must be dealt with by conceptual steps, among other things by the expedient imposition of alternative sentences. Presently, when many alternative sentences end with imprisonment as a result of a failure to perform the alternative sentence, increasing prisons' capacity must be considered. According to the statement by the General Directorate of the PSCR (hereunder only the GD of PSCR) the capacity of Kynšperk nad Ohří prison increased by 216 places in December 2006, and the new structure of the Brno prison in Rapotice (up to 400 places) is being brought into service at present. A further increase in prison capacity for 2007 will be possible once the PSCR knows the volume of its investment resources from the Czech 2007 budget.

Departments with enhanced technical and structural security have no support in the law (only a mention in a lesser legal regulation). Convicts placed in such departments lack the guarantee of a right to be demonstrably acquainted with the reasons for their placement and the right to file a complaint against such placement to be decided by a body other than the one that decided such placement in the first place. Upon the Defender's recommendation, the GD PS CR will submit a draft amendment to the Act on Imprisonment to the Ministry of Justice, which should institute the concept of departments with enhanced technical and structural security, including the procedure for placement and removal of convicts, and their treatment in such departments, in the first half of 2007.

Restrictive measures used within service of imprisonment are often based not on assessment of individual risks of a specific convict but applied evenly to a certain group of convicts. Upon the Defender's recommendation, locking convicts in cells or bedrooms for instance will be treated uniformly by an internal order that will come into effect in all prison facilities in the first quarter of 2007.

Convicts without income and on social pocket money are issued with **hygienic supplies that cannot be deemed sufficient**. Convicts without income who are on social pocket money (CZK 100 per month) must be issued hygienic supplies in such amounts and kinds as to be useable for their personal hygiene. At present, there is a practice of one bar of soap and one roll of toilet paper per convict per month almost without exception. First and foremost, the list of basic hygienic supplies should be set uniformly (obviously with differences for men and women), and such a list should include for instance shampoo, toothpaste, a toothbrush, shaving kit, etc., with respect to the convict's obligation to keep their hair and beards clean. Upon the Defender's recommendations issued in association with the amendment to the Act on Imprisonment, convicts without income will be issued hygienic packages in such amounts as to be able to maintain all personal hygiene.

Convicts on social pocket money only, respectively foreigners without health insurance, **do not have sufficient means to pay for additional charge medicines**. The Defender believes such convicts should have a "special account" established that will not be reduced in any way while such funds will serve exclusively to pay for medicines (or medicinal additives like artificial sweeteners for diabetics). It is also possible to institute a corroborative system of deducting part of the funds from the convicts' income for any potential medical care. On the Defender's recommendation, GD PSCR will assess institution of a "special account" as well as deduction of funds from a convicts' income to the benefit of health care in association with the amendment to the Act on Imprisonment.

The widespread practice of warders' presence at medical check-ups contravenes the pertinent provisions of the Act on Care of People's Health, the Convention on the Protection of Human Rights and Biomedicine and the decree issuing the order of the exercise of imprisonment. The Defender recommended settling the situation by for instance installing signalling technology in surgeries, or fitting the door with a Perspex peephole that would enable the PS CR member to monitor the convict, but be at the same time to be out of earshot if the doctor so wishes. Upon the Defender's recommendation, the PS CR, having carried out a material and financial needs analysis, will decide on

implementation of the specified measure – doors of surgeries in prisons shall be fitted with Perspex peepholes.

The practice of **permitting convicts phone calls** to relatives and others fails to create sufficient room for preserving convicts' family and social bonds. The decision to permit or forbid a phone call must be issued in a matter of days. Convicts ought to be allowed to phone without the presence of third parties, with respect to the options of PS CR to acquaint themselves with the contents of the call either by direct tapping or making a record of such a call. Upon the Defender's recommendations, GD PS CR will initiate a procedure that will ensure a decision to permit or forbid a call to the convict will be made as quickly as possible.

Convicts are not allowed **contact with their minor children** in the course of visits. Any restrictions can be acceded to only in the case of a justified suspicion that the child is being used as a means to smuggle unauthorised items, not as a general rule. Visits without video or audio control are not permitted under stipulated conditions, yet practice tends to be a general refusal to allow such visits at all. Upon the Defender's recommendations, GD PS CR promised to draft a methodology for the procedure of permitting and implementing visits to convicts in 2007 to apply to all prisons uniformly.

The **System of Sectional Service, so called 'Catwalkers', or the post of head of cell/bedroom, or co-ordinators from among convicts** is a source of factual inequality of convicts. The convicts' self-governing system should include an option to take an active part in the prison's operation – for instance the possibility to raise their comments at regular meetings with prison staff. Upon the Defender's recommendation, GD PS CR instructed all prisons that convicts may not be assigned roles that could in fact give rise to convicts' inequality.

Up until November 30, 2000, **the basic component of remuneration** was derived from minimum wage tariffs in the civil sector (i.e. increase of such tariffs reflected in the amount of remuneration), but since then it has been determined as fixed and has not been altered. Some working convicts fail to achieve remuneration in the amount of social pocket money of the non-working convicts; objectively unattainable standards still apply and therefore convicts are penalised for failure to meet them. Upon the Defender's recommendations, the GD PS CR promised to make the convicts' working remuneration more accurate in the amendment to the Act on Imprisonment.

Thorough personal searches still have a collective character. There is no obstacle to other convicts watching those being searched and to violating their dignity in being monitored by camera systems. Upon the Defender's recommendations, the GD PS CR will methodologically treat the ban on the collective nature of thorough personal searches. Simultaneously, places for such searches to be performed (premises not monitored by a camera system) shall be ascertained.

6. Facilities for the Exercise of Institutional and Protective Education

Systematic visits in four facilities where institutional and protective education takes place [the provisions of Section 1 (3) and (4) (a) of the Public Defender of Rights Act], were carried out in the 4th quarter of 2006. Chrastava Reformatory and Children's Home with School, Primary and Secondary School with School Dinning Hall, the detached workplace of the Ostrava-Hrabůvka Reformatory and School Dinning Hall in Polanka nad Odrou, Pšov Reformatory with School Dinning Hall (hereunder only "facility", "reformatory" or R) and Department for Children with Extreme Behavioural Disorders at the Children's Home with School as part of the Boletice nad Labem-Děčín Reformatory, Children's Home with School, Centre of Educational Care, Primary School, Secondary School and School Dinning Hall (hereunder only the "EBD dep.") were visited.

Characteristics of the facilities and children in them are detailed in the tables below:

Name of facility	Region	Founder	School with facility	School dislocation	Type of school
Chrastava R	Liberec	MEYS	Yes	in facility	PS, SS
Polanka R	Moravian-Slesian	MEYS	No	–	IEP
Pšov R	Karlovy Vary	MEYS	No	–	WEG

EBD dep.	Ústí	MEYS	Yes	in facility	PS
----------	------	------	-----	-------------	----

Glossary with the table:

IEP – Individual educational plan

WEG – work-education group pursuant to Section 2 (7) of MEYS Decree No. 438/2006 Coll.

MEYS – Ministry of Education, Youth and Sports

PS, SS – primary school, secondary school

Name of facility	Total capacity	No of education groups	Inst. education	Prot. education	No of children present / outside institute	On the run	No of ped. staff
Chrastava	44	6	27	3	30/1	7	30
Polanka	12	2	5	2	7/3	2	19
Pšov	63	5	23	6	29/12	22	36
EBD dep.	12	2	0	7	7/0	0	32

Among other things, on his visits the Defender focused on meeting the request for greater division between children with ordered institutional education from children with imposed protective education, the legality of installing audio-visual systems and special technical and structural aids (bars), the regime in different facilities and fulfilment of children's rights in the sense of international conventions and Act No. 109/2002 Coll., on the Exercise of Institutional and Protective Education in School Establishments and on Preventive Educational Care in School Establishments – hereinafter the AEIPE). On a general level, the Defender also paid attention to the overall concept of care for family and child, respectively foster care, using knowledge from the complaints agenda.

Findings and Recommendations of the Defender

a) General Findings

The Defender first and foremost believes that the overall concept of foster care for children and adolescents, respectively care for family and children – at present fractured and often uncoordinated between the Ministry of Education, Youth and Sports, Ministry of Health and the Ministry of Labour and Social Affairs, should be unified under the authority of one central state body to prevent any further rebukes from Committee on the Rights of the Child – the supervisory body over implementation of the Convention on the Rights of the Child, i.e. the international agreement by which the Czech Republic is bound and that has application priority over the law. Given the extension of the social work context often to the entire family, this body should be the Ministry of Labour and Social Affairs. Besides, the Czech government has committed itself to promoting a change in the character of the social and legal protection of children by *preferring family care to institutional care, in its statement of policy. The agenda of social and legal protection of the child will be unified under the Ministry of Labour and Social Affairs (MLSA). Therefore, the government shall establish a Ministry of Labour, Social Affairs and the Family where it will gradually unify the pertinent agendas for the area of the family in state administration.*

The Defender recommended taking immediate conceptual steps toward unifying care for children under the authority of one body.

The Defender believes work with the family must be intensified – the current state policy and practice does not pay much respect to this aspect however, and relatively little attention is actually given to preventive aspects and continuous work with the family. The remaining alternative to undersized terrain work with the family is a stay in an institution. This fact is due to an insufficiently developed system of social services on the preventive and advisory level, as well as an inadequate number of staff in the bodies of social and legal protection of children. While 10 to 12 cases fall under one worker in other countries, this number is higher by 100 and more in the Czech Republic. Therefore, it is understandably impossible to work intensively with a child let alone the family under such conditions (sometimes also the great distance between the institute and the child's home

plays a role – see below). For instance, “temporary” care plans (Great Britain) or plans for social work with children (Slovakia) are compiled on the first signs of problems in a family that may have an impact on the child’s development and education, in other countries. The objective of these plans that pertain not only to the child, but the entire family, is the effort to help such a family overcome difficult circumstances, and thus prevent much greater disruption of family life – in extreme cases also removal of the child. Parents partake in compilation of the plans, and the child too – depending on his/her cognitive skills but sometimes the wider family too (Slovakia). If the child is removed, work with the child is not at an end, and neither is work with the family. Placement outside the family is perceived as a temporary measure. For instance bodies of social and legal protection of children in Slovakia are under an obligation to aim for as short a stay of a child outside the family as possible, or to apply a different measure. Slovak legislation also explicitly rules out housing or property relations as a serious threat or disturbance to the child’s upbringing, as a reason for ordering institutional education.

The Defender recommended focusing on a change to the overall concept of foster care and care for family and children as follows:

- **augmenting the social services system in the field of prevention and counselling,**
- **heightening preventive activity pertaining to threatened children and their families,**
- **continuous intensive work with threatened children and their families, including**
- **compilation of aid plans in the presence of related parties,**
- **stress on the fact that child removal is only an extreme option and housing or property relations should not be a reason for such action.**

b) Findings on the Regime of Service of Institutional and Protective Education

The basic principle of separating children with ordered institutional education from children with imposed protective education the law presumes, ensued from legislative changes (AEIPE amendment executed by Act No. 383/2005 Coll.) aiming towards harshening conditions in the protective education regime (particularly the option to use special technical and structural aids and audio-visual systems). The purpose of the separation of both regimes is to protect children with ordered institutional education, i.e. a guarantee that the stricter regime, including the existence of technical and structural aids and cameras, will not impact on them, too. On his visits, the Defender gained an impression that this requirement is being ignored. Children with protective education are mostly incorporated in institutions in a different educational group, which should be an exception in keeping with the law.

Given the fact that protective education has been imposed on 102 children at present [whilst 98 cases are a deviation from the criminal measure pursuant to Section 12 (b) in association with Section 22 of Act No. 218/2003 Coll. on the Liability of Juveniles for Illegal Acts and on Juvenile Courts – ALJ], their placement in the few facilities would impact on their opportunity to preserve bonds with family and relatives with respect to the distance of the facility from their homes. This is only corroborated by the fact the institutional education concept should proceed towards establishing small facilities of family type as are common in neighbouring countries. A similar problem (large distance from family) occurs in cases of facilities that should focus on children with special needs (like the Polanka facility).

The Defender recommended establishing “small” family type facilities; primarily facilities for groups of children in need of heightened, or specific care (for instance drug addicts’ children).

The Defender also concentrated on the installation of special structural and technical aids and audio-visual systems pursuant to the provisions of Section 15 of AEIPE containing legal sanction to install camera systems and monitor the building surrounding and site of the facility, premises where children have no access, and the facility’s corridors. The Defender found the existence of cameras in Chrastava reformatory and at the EBD dep. in Boletice. The cameras in Chrastava reformatory have been fitted in the building for children with imposed protective education, yet the Defender discovered their installation

in a section housing exclusively children with ordered institutional education, which is in contravention of Section 15 (1) of AEIPE. Cameras have also been installed at EBD dep. in Boletice too: in corridors, common areas and rooms for teaching of children – though the law does not enable installation of cameras to such an extent.

The Defender recommended instantly removing the cameras from places where they are not legally sanctioned, and likewise recommended to interpret pertinent provisions of the law in order for the option to fit in audio-visual systems not to affect children with ordered institutional education and to protect the rights of children with imposed protective education as much as possible.

On his visits the Defender perceived differences in material equipment of facilities, the number and qualifications of personnel, presence of psychologists as well as in the very regime (for instance setting of points systems, steps in education that have no hold in the law – like removal of their own clothing) and similar. With respect to this fact and pursuant to the concept of equal rights, the **Defender recommended drafting standards of care provided to children in school facilities.**

Further Defender's findings and recommendations pertained for instance to differently set so-called points systems, the possibility of children's stays at home with their parents, to outings, etc.